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09/913,460	08/15/2001	Tsuguo Kimura	427-47	2400

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
1723	5

DATE MAILED: 04/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/913,460

Applicant(s)

KIMURA ET AL.

Examiner

Tony G Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) *TGS*
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

- PTO COPY*
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Claims directed to the species shown in

A. species figures 1-5; claims 1-9.

B. species figures 6-7; claims 10-13.

C. Species figures 8-9; claims 14-17.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Arthur Crawford on 3/19/2003 a provisional election was made Without traverse to prosecute the invention of Species C, figures 8-9, claims 14-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Parent claim 15 of claim 17 refers to "elongates an intermediate product having a large diameter", however then uses the same terminology of "intermediate product" in the reference of "and produces an intermediate product having a smaller diameter".

A problem occurs with regards to claim 17, in lines 4-5, whereby it is unclear in which "intermediate product" is being referred to in the statement "without elongating *said intermediate product* in order to achieve stress relaxation *in said intermediate product* being elongated" (EMPHISIS ADDED). It is unclear in which intermediate product (i.e. smaller diameter or larger diameter) is being referred to. Thereby claim 17 is unclear in what applicant regards as the invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 8-009887 (JP '887 was cited as an X reference by the international search report and cited on PTO 1449).

JP '887 teaches a sheet forming unit for elongating a 1st material into a sheet;
a delivering unit for application of a 2nd raw material so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

a wrapping means for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material, see full text and figure 9 as noted by the search report.

8. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Pentzlin 2960045.

Pentzlin teaches a sheet forming unit 93 for elongating a 1st material into a sheet;
a delivering unit 118 for application of a 2nd raw material so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

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a wrapping means 98 for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material.

9. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Chambers et al 4275647.

Chambers teaches a baked batter sheet forming unit before being fed onto belt 15, column 10 line 22, for conveying the elongated a 1st material into a sheet;

a filling delivering unit 12 for application of a 2nd raw material so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

a wrapping means as seen by the tube former 51, and 50 for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material.

10. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Tashiro 5290577.

Tashiro teaches a sheet forming unit 21, for elongating a 1st material into 1 a sheet 11;

a delivering unit 4 for application of a 2nd raw material 41 so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

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a wrapping means 5, 51 for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material.

11. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated Askman et al 5660102.

Askman et al teaches a sheet forming unit 12, 16 for elongating a 1st material 13 into a sheet;

a delivering unit 20, 21 for application of a 2nd raw material so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

a wrapping means 22, 24, 27, for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material.

12. Claim 14 is rejected under 35 U.S.C. 102(e) as being anticipated by Kobayashi 6001403

JP '887 teaches a sheet forming unit for elongating a 1st material into a sheet;

a delivering unit for application of a 2nd raw material so as to being in a strand form whereby the 1st raw material is elongated in sheet shape and conveyed by said sheet forming unit; and

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a wrapping means for wrapping the sheet shape 1st raw material, while the sheet shape 1st raw material is being conveyed, as to wrap the 2nd raw material which is applied as a strand form, in the 1st raw material, see full text and figure 9 as noted by the search report.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over: Tashiro 5290577 in view of Knebl 4949630,
15. or alternately Askman et al 5660102 in view of Knebl 4949630,
16. or alternately Chambers et al 4275647 in view of Knebl 4949630,
17. or alternately Pentzlin 2960045 in view of Knebl 4949630,
18. or alternately Kobayashi 6001403 in view of Knebl 4949630.

Each of the references Tashiro 5290577, or alternately Askman et al 5660102 or alternately Chambers et al 4275647, or alternately Pentzlin 2960045, or alternately Kobayashi 6001403 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the addition of an elongation unit which elongates the wrapped product from a larger diameter to a smaller diameter product.

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The reference to Knebl **4949630** ('**630**) teaches that a form folded product with a 1st material wrapped about a 2nd material whereby it produces a larger diameter wrapped intermediate product whereby it is later additionally roller into cylindrical geometry by rollers 24 so it provides a completely enclosed product of a desired shape and size.

Also, whereas it is common and old and well known in the art of dough/plastic working devices that the cylindrical rollers may provide a means to provide a smaller shape thereby elongating the product when worked upon by the rollers, it is deemed that it would have been obvious to one of ordinary skill in the art to provide each of the references Tashiro 5290577, or alternately Askman et al 5660102, or alternately Chambers et al 4275647, or alternately Pentzlin 2960045, or alternately Kobayashi 6001403, with a roller shaper/elongation unit as taught by the Knebl '**630** reference so as to provide a completely cylindrical product of a desired size and thereby inherently elongating the intermediate product in the process.

With regards to claim 17 note that the elongation unit is provided with a conveyance passage located between the space between the rollers. Absent any distinguishing language to the particular geometric shape of the conveyance passage, and whereas the invention is not directed to a method claim, the operation of a free state without elongation of a stress relaxation is immaterial to the patentable distinction of the apparatus claims.

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19. Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over: Tashiro 5290577 in view of Ruffinatti 4648316 and JP 1-128750 (cited on PTO 1449),

20. or alternately Askman et al 5660102 in view of Ruffinatti 4648316 and JP 1-128750 (cited on PTO 1449),

21. or alternately Chambers et al 4275647 in view of Ruffinatti 4648316 and JP 1-128750 (cited on PTO 1449),

22. or alternately Pentzlin 2960045 in view of Ruffinatti 4648316 and JP 1-128750 (cited on PTO 1449),

23. or alternately Kobayashi 6001403 in view of Ruffinatti 4648316 and JP 1-128750 (cited on PTO 1449),

Each of the references Tashiro 5290577, or alternately Askman et al 5660102 or alternately Chambers et al 4275647, or alternately Pentzlin 2960045, or alternately Kobayashi 6001403 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the delivering unit comprises a plurality of cone members pointed downward and rotating in the same direction to supply a discharge strand from the bottom of the unit.

The Ruffinatti reference teaches dough working device may have a delivery unit 1, with conical rollers 16, 17 rotating in the same direction, see arrows F3, F4 in figure 3 so as to supply a continuous feed of material from the outlet of in a solid strand of material.

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The JP 1-128750 (JP '750) reference teaches that a food working device may have a material delivering unit with conical rollers 42, 40 in figure 1 to feed material in a continuous strand 41 for further working by the device.

In view of each of the teachings of the Ruffinatti reference and the JP '750 reference that one may provide a food product working device with a feed device having tapered conical rollers which rotate in a direction to feed material in a continuous strand for further working of the material, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for each of the 2nd material feed delivering units of each of the references of Tashiro 5290577, or alternately Askman et al 5660102 or alternately Chambers et al 4275647, or alternately Pentzlin 2960045, or alternately Kobayashi 6001403 such that the feed of the 2nd material into the device is provided in a more efficient and continuous manner.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose devices which produce a wrapped product with an inner core and outer wrapper: Brunner 3667971, Ek 4842879, Tsay 5191832, Knebl et al 548894 ('894), Knebl 5002791 ('791).

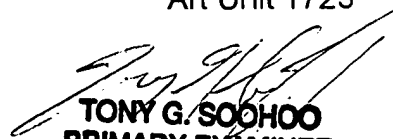
25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G Soohoo whose telephone number is (703) 308-2882. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri.. The fax phone numbers for the organization where this application or proceeding is assigned

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are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Tony G Soohoo
Primary Examiner
Art Unit 1723

tgs



TONY G. SOOHOO
PRIMARY EXAMINER